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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/573,693

09/28/2006

Leo Bernard de Vries

294-246 PCT/US

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EXAMINER

XAVIER, VALENTINA

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,693	<b>Applicant(s)</b> DE VRIES ET AL.	
	<b>Examiner</b> VALENTINA XAVIER	<b>Art Unit</b> 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/19/2009 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 – 3, 5 – 7, 11, 13 and 15 - 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein (US 6,892,672).**

Klein discloses an apparatus for breeding fish comprising a frame-like structure (10) having as a part thereof at least four mutually spaced apart buoyancy/ballast bodies (17 – depending on the level of water in the legs), buoyancy/ballast bodies being mutually connected by connecting means (13), such that an open frame is formed by at least said connecting means (See Fig. 1), wherein at least between the buoyancy/ballast bodies a series

of breeding/harvesting surfaces (10A - C) are provided (See Fig. 5), breeding surfaces extending substantially parallel to each other above each other, and a longitudinal axis disposed at an angle relative to the breeding surfaces, the longitudinal axis extending substantially vertically during use (See Fig. 5).

The breeding surfaces of Klein are formed by rows of growing elements (11) arranged substantially next to each other in receptacles.

Klein discloses paths being provided (15, 16) between the rows of growing elements located next to each other.

Klein discloses the frame being provided with supporting means (22) on which the breeding surfaces are mounted, such that the breeding surfaces are removable individually or in groups.

Klein discloses the breeding surfaces having upstanding edges.

Klein teaches that the buoyancy/ballast means is substantially cylindrical and that the apparatus is substantially self-lifting.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1 – 10 and 15 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gollott et al (US 4,266,509).**

**With regard to claims 1 – 8:**

Gollott et al discloses a method and apparatus for offshore depurating habitat for shellfish comprising a frame-like structure (10) having as a part thereof at least four mutually spaced apart ballast means (14, 16, 18, 20), ballast means being mutually connected by connecting means (22, 24), such that an open frame is formed by at least said connecting means (See Fig. 6), wherein at least between the ballast means a series of breeding/harvesting surfaces (44) are provided (See Fig. 6), breeding surfaces extending substantially parallel to each other above each other (See sections created by 42), and a longitudinal axis disposed at an angle relative to the breeding surfaces, the longitudinal axis extending substantially vertically during use (See Fig. 1)

The breeding surfaces of Gollott et al are formed by rows of growing elements (shellfish) arranged substantially next to each other in receptacles 44.

Gollott et al discloses paths being provided (created by element 42) between the rows of growing elements located next to each other.

Gollot et al discloses the breeding surfaces being manufactured from plastic (See last line of Col. 3).

Gollott et al discloses the frame being provided with supporting means (18, 20) on which the breeding surfaces are mounted, such that the breeding surfaces are removable individually or in groups.

Gollott et al discloses the breeding surfaces having upstanding edges (see elements 44 in Fig. 6).

Gollott et al fails to teach that the ballast means is substantially cylindrical. However, it would have been an obvious matter of design choice to use a cylindrical shape, since applicant has not disclosed that using this shape solves any stated problem or is for any particular purpose.

**With regard to claim 9:**

Gollott et al shows in Fig. 6 that the distance between the ballast means is relatively large relative to the height of the frame. Gollot et al fails to show specifically that the distance between the ballast means being three or five times as much as the height of the frame. However, it would have been an obvious matter of design choice to use this distance, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

**With regard to claim 10:**

Gollot et al also shows that the breeding surfaces are situated relatively closely above each other but fails to show the distance being between 0.1 and 1 meter, more in particular

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between 0.1 and 0.5 meter and preferably between 0.25 and 0.5 meter. However, it would have been an obvious matter of design choice to use these given ranges, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

**With regard to claim 15 – 18:**

The discussion regarding claims 1 – 14 are relied upon for the structure recited in the instant claim. Therefore, the method steps of the instant claim(s) would be readily apparent during the use of the habitat for shellfish since similar structure is taught in the above discussion.

**Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gollott et al (US 4,266,509) in view of Foster et al (US 6,044,798).**

**With regard to claim 12:**

Gollot et al fails to show that the frame comprises of a number of subframes comprising a series of breeding surfaces. However, Foster et al teaches a floating aquaculture apparatus combining a series of units (34) used for aquaculture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use this technique of supporting more than one unit or "sub frame" within a larger system for the predictable result of providing a larger habitat.

***Response to Arguments***

Applicant's arguments with respect to claims 1 – 13, and 15 – 21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VALENTINA XAVIER whose telephone number is (571)272-9853. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571)272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy D. Collins/  
Primary Examiner, Art Unit 3643  
For Michael Mansen

VX